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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,722	10/16/2003	Kevin D. Struthers	37356-0073 CT1	1777
23973	7590	08/27/2004	EXAMINER	
DRINKER BIDDLE & REATH ONE LOGAN SQUARE 18TH AND CHERRY STREETS PHILADELPHIA, PA 19103-6996			WALTON, GEORGE L	
			ART UNIT	PAPER NUMBER
			3753	
DATE MAILED: 08/27/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,722

Applicant(s)

STRUTHERS ET AL.

Examiner

George L. Walton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/16/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 1-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 2, 2004.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 10 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over either one of Hathaway et al (6,474,132 B1 or 6,581,458 B1). The nutating disk is readable on element 39 and the chamber for housing the nutating disk is readable on element 12. Elements 5 and 11 are readable on the cover. Note that the flow meter of Hathaway et al can be utilized with different types of fluids, that including a fuel that is dispensed. In

the alternative, it is apparent to one of ordinary skill in the art, at the time the invention was made to replace the nutating disk 39, if desired. This can be easily achieved by the readily available access to assembling the above flow meter elements together as a unit. To repair the nutating device would be the reverse of assembling the flow meter elements, i.e. disassembling the above flow meter elements.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Kullmann, Bystricky, Rittenhouse, Williams et al or Swinson et al. Note that intended use is afforded no patentable weight. It is well known in the art to dispense many types of fluids through a flow meter. The fluid can be other than fuel. In the patent to Bystricky, the chamber is readable on element 44 that houses nutating device 38 and 42. Elements 46, 48 and 50 are readable on the cover. Also,

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in the patent to Kullmann, the interior of element 12 that houses nutating disk elements 14 and 20 is readable on the chamber. Element 88 is readable on the cover. The cover is readable on elements 9 and 11 of Rittenhouse. The interior of element 3 is readable on the chamber for housing or enclosing the nutating device 13-19. The patent to Williams et al teaches a cover 12 and an interior chamber 14 for housing a nutating device 76. In the patent to Swinson et al, the chamber is readable on element 86 that houses nutating device 70 and 76-79. The cover is readable on elements 14, 16 and 94. To one of ordinary skill in the art, at the time the invention was made, it would be obvious to disassemble the flow meter elements in either patent to replace or repair either nutating device in the reverse order of assembling the flow meter elements together as a unit. The repairing is achievable because of the accessibility of the flow meter elements to be assembled or disassembled.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George L. Walton whose telephone number is 703-308-2596. The examiner can normally be reached on M-F, 8:00-4:30. If

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attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 703-308-1272. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



George L. Walton
Primary Examiner
Art Unit 3753

GLW